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Message Text

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ORIGIN SS-25

INFO OCT-01 ISO-00 /026 R

DRAFTED BY L:MBFELDMAN:AD
APPROVED BY L:MBFELDMAN
ARA/CEN - MR. LAZAR (DRAFT)
JUSTICE - MR. STEIN (IN DRAFT)
L/M-MISS HUMMER
S/S-MR. R. KUCHEL
---------- 107021
R 192311Z JUN 75
FM SECSTATE WASHDC
TO AMEMBASSY SAN JOSE

C O N F I D E N T I A L STATE 144758

EXDIS

E.O. 11652: N/A

TAGS:

SUBJECT: VESCO EXTRADITION LAW

REF: (A) SAN JOSE 2098; (B) SAN JOSE 1945; (C) SAN JOSE 3913 OF 10/9/74; (D) STATE 226374; (E) STATE 215168

1. IN ACCORDANCE WITH EMBASSY REQUEST (REF. A) DEPARTMENT HAS REVIEWED PENDING EXTRADITION LAW REFORM BILL (REF. C) AND HAS PREPARED COMMENTS FOR YOUR USE WITH GOCR, AND WITH OPPOSITION AT YOUR DISCRETION. OUR LATEST STUDY, SHOWS THAT THE PENDING BILL NEEDS A FEW SIGNIFICANT REVISIONS. WHILE IT WOULD BE AN EXTREMELY HELPFUL SIGNAL TO VESCO TO HAVE PRESIDENT ODUBER PROPOSE REVISIONS WHICH WOULD JEOPARDIZE VESCO'S POSITION IN COSTA RICA, WE ARE SKEPTICAL THAT ODUBER WILL DO SO. HOWEVER, ODUBER HAS INVITED OUR SUGGESTIONS INDICATING THAT HE WANTS BILL TO BE REVISED TO FACILITATE EXTRADITION OF VESCO. WE WOULD BE REMIS NOT TO ADVISE HIM WHAT NEEDS TO BE DONE AND TO TEST HIS WILLINGNESS
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TO COOPERATE.

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2. THE VERSION OF THE EXTRADITION BILL APPROVED BY THE ASSEMBLY JUDICIAL COMMISSION, WHICH IS THE LATEST VERSION, (REF. C) DOES CORRECT MANY OF THE SERIOUS PROBLEMS CREATED BY THE VESCO LAW. HOWEVER, IN OUR OPINION, THE FOLLOWING

FURTHER CHANGES ARE NECESSARY BOTH IN TERMS OF THE VESCO CASE AND IN TERMS OF GENERAL EXTRADITION POLICY.

ARTICLE 1 SHOULD BE REVISED TO MAKE CLEAR THAT IT DOES NOT AFFECT TREATY OBLIGATIONS, ALONG THE FOLLOWING GENERAL LINES. "IN THE ABSENCE OF TREATIES, THE CONDITIONS, AS WELL AS THE PROCEDURE AND EFFECTS OF THE EXTRADITION, SHALL BE GOVERNED BY THIS LAW, WHICH SHALL APPLY ALSO TO THOSE ASPECTS NOT PROVIDED FOR BY THE TREATIES, PROVIDED THAT NO PROVISION OF THIS LAW SHALL BE APPLIED SO AS TO DENY THE EXTRADITION OF A FUGITIVE REQUIRED UNDER THE TERMS OF ANY TREATY."

ARTICLE 2(E) SHOULD BE REVISED TO PERMIT EXTRADITION UNDER A STATUTE WHICH PROVIDES FOR PENALTY OF IMPRISONMENT OR FINE ON THE FOLLOWING LINES: "WHEN THE CRIME IS NOT SUBJECT TO PUNISHMENT BY DEPRIVATION OF LIBERTY OR, IF IT IS, IT IS FOR ONE YEAR OR LESS."

ARTICLE 2(F) SHOULD BE DELETED TO FACILITATE EXTRADITION FOR NARCOTICS OFFENSES AND OTHER SERIOUS CRIMES COMMITTED IN ONE JURISDICTION AND AFFECTING OTHERS.

ARTICLE 2(G) SHOULD BE REVISED TO CONFORM WITH TRADITIONAL LANGUAGE OF EXTRADITION TREATIES AND INTERNATIONAL PRACTICE, AS FOLLOWS: "WHEN THE OFFENSE FOR WHICH THE EXTRADITION IS REQUESTED IS OF A POLITICAL CHARACTER, OR THE PERSON WHOSE EXTRADITION HAS BEEN REQUESTED PROVES THAT THE EXTRADITION REQUEST HAS BEEN MADE FOR THE PURPOSE OF TRYING OR PUNISH-ING HIM FOR AN OFFENSE OF A POLITICAL CHARACTER."

YOU MIGHT POINT OUT THAT THE LANGUAGE IN THE PENDING BILL COULD BE CONSTRUED TO PRECLUDE THE EXTRADITION OF ANY POLITICAL FIGURE REGARDLESS OF THE SERIOUSNESS OF HIS CONFIDENTIAL

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COMMON CRIMES. FOR EXAMPLE, THE VENEZUELAN DICTATOR JIMENEZ WAS SURRENDERED TO VENEZUELA FOR PROSECUTION FOR COMMON CRIMES ONCE THE U.S. COURTS DECIDED HE WAS NOT BEING SOUGHT FOR AN OFFENSE OF A POLITICAL CHARACTER. OBVIOUSLY, THERE WAS SOME POLITICAL MOTIVATION FOR THE EXTRADITION REQUEST. WHAT IS IMPORTANT HERE IS NOT THE MOTIVATION FOR THE REQUEST BUT THE CHARACTER OF THE CRIME FOR WHICH EXTRA-DITION IS SOUGHT AND THE TREATMENT THE OFFENDER WILL

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RECEIVE UPON HIS RETURN.

ARTICLE 2(H) SHOULD BE DELETED UNLESS ARTICLE 1 CAN BE MODIFIED. WHILE WE RESPECT THE HUMANITARIAN PRINCIPLE UNDERLYING THIS PROVISION, IT IS SUBJECT TO SERIOUS ABUSE AND CAN GIVE RISE TO PROBLEMS IN INTERNATIONAL RELATIONS IN ITS APPLICATION. THEREFORE, MOST COUNTRIES PREFER TO DEAL WITH THIS PROBLEM BY AVOIDING EXTRADITION TREATIES WITH STATES THAT DO NOT HAVE ADEQUATE CRIMINAL SYSTEMS OF JUSTICE. WE MUST BE CAREFUL HOWEVER IN DISCUSSING THIS PROVISION TO AVOID POSSIBLE DISTORTION BY VESCO OF OUR OBJECTIVES.

ARTICLE 8(SIC)(I?) SHOULD BE REVISED TO PERMIT PENALTTFS IN EXCESS OF 25 YEARS FOR SERIOUS CRIMES SUCH AS MURDELTTER WHICH A LIFE SENTENCE MAY BE APPROPRIATE.

3. WE WOULD APPRECIATE FURTHER CLARIFICATION OF THE SCOPE OF ARTICLE (J) (ARTICLE 2H IN LEGISLATIVE SUBCOMMISSION VERSION).

4. WITH REGARD TO HIRING LOCAL ATTORNEY (PARA 6 REF. B), U.S. ATTORNEY IN NEW YORK WILL BE SENDING LETTER TO JUSTICE REQUESTING AUTHORIZATION FOR ATTORNEY TO HELP EVALUATE LAW AND REVISIONS. KISSINGER

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Message Attributes

Automatic Decaptioning: Z
Capture Date: 01 JAN 1994
Channel Indicators: n/a
Current Classification: UNCLASSIFIED
Concepts: EXTRADITION, LAW, LEGISLATIVE BILLS, NEGOTIATIONS
Control Number: n/a
Copy: SINGLE
Draft Date: 19 JUN 1975
Decaption Date: 28 MAY 2004
Decaption Note: 25 YEAR REVIEW
Disposition Action: RELEASED
Disposition Approved on Date:
Disposition Authority: GolinoFR
Disposition Case Number: n/a
Disposition Comment: 25 YEAR REVIEW
Disposition Date: 28 MAY 2004
Disposition Event:
Disposition History: n/a
Disposition Reason:
Disposition Remarks:
Document Number: 1975STATE144758
Document Source: CORE
Document Unique ID: 00
Drafter: MBFELDMAN:AD
Enclosure: DG ALTERED
Executive Order: GS
Errors: N/A
Film Number: D750215-0066
From: STATE
Handling Restrictions: n/a
Image Path:
ISecure: 1
Legacy Key: link1975/newtext/t19750633/aaaabdwq.tel
Line Count: 140
Locator: TEXT ON-LINE, ON MICROFILM
Office: ORIGIN SS
Original Classification: CONFIDENTIAL
Original Handling Restrictions: EXDIS
Original Previous Classification: n/a
Original Previous Handling Restrictions: n/a
Page Count: 3
Previous Channel Indicators: n/a
Previous Classification: CONFIDENTIAL
Previous Handling Restrictions: EXDIS
Reference: 75 SAN JOSE 2098, 75 SAN JOSE 1945
Review Action: RELEASED, APPROVED
Review Authority: GolinoFR
Review Comment: n/a
Review Content Flags:
Review Date: 08 SEP 2003
Review Event:
Review Exemptions: n/a
Review History: RELEASED <08 SEP 2003 by CunninFX>; APPROVED <14 NOV 2003 by GolinoFR>
Review Markings:

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US Department of State
EO Systematic Review
06 JUL 2006

Review Media Identifier:
Review Referrals: n/a
Review Release Date: n/a
Review Release Event: n/a
Review Transfer Date:
Review Withdrawn Fields: n/a
Secure: OPEN
Status: NATIVE
Subject: VESCO EXTRADITION LAW
TAGS: PFOR, PGOV, CS, US, (VESCO, ROBERT)
To: SAN JOSE
Type: TE
Markings: Margaret P. Grafeld Declassified/Released US Department of State EO Systematic Review 06 JUL 2006